SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
JAN 13 1972
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-743

LOCTITE CORPORATION, *Petitioner,*

v.

BROADVIEW CHEMICAL CORPORATION, *Respondent.*

REPLY BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

WALTER D. AMES
JAMES H. MARSH, JR.
Attorneys for Petitioner,
Loctite Corporation
WATSON, COLE, GRINDLE & WATSON
815 Fifteenth Street, N.W.
Washington, D. C. 20005

Of Counsel:

J. RODNEY RECK

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-743

LOCTITE CORPORATION, *Petitioner,*

v.

BROADVIEW CHEMICAL CORPORATION, *Respondent.*

REPLY BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

Briefly stated, petitioner has presented the questions whether by denying it a hearing on the existence of the actual controversy necessary to sustain a declaratory judgment action, the Second Circuit failed to follow the clear requirement of *Golden* v. *Zwickler,* 394 U.S. 103 (1969), and whether such denial violated petitioner's right to due process of law. In its brief in opposition, the only procedure that respondent even intimates approaches a hearing is the oral argument before the Court of Appeals. While petitioner never

considered any such possibility, and the Court of Appeals never made any utterance supporting that hypothesis, any such "hearing" would not provide petitioner with due process of law. As this Court said in *Goldberg* v. *Kelly,* 397 U.S. 254, 267 (1970), quoting in part *Armstrong* v. *Manzo,* 380 U.S. 545, 552 (1965):

> "The hearing must be 'at a meaningful time and in a meaningful manner.'"

Twenty minutes of oral argument before a Court of Appeals, where no witnesses can be called, no documents offered in evidence, and all of the basic attributes of trial denied, is not a meaningful hearing under *Golden* v. *Zwickler,* nor is it sufficient to satisfy due process. It is the equivalent of a criminal trial at which the accused is given a "full hearing"—but merely denied the right to offer evidence in his own behalf.

Actually, of course, there was no hearing before the Court of Appeals, which never intimated that it was conducting a *Golden* v. *Zwickler* hearing and would probably be amazed to learn that respondent has attempted to turn its hearing room into a court of primary jurisdiction.

Respondent then proceeds as though there were no denial of due process because of some mental gymnastics that it says took place in the minds of the Court of Appeals Judges. Since the Court of Appeals is not a court of record and only entered a one line affirmance, any such attempt by respondent is pure impudence.* This sort of clairvoyance will not be re-

---

* The quotation on page 3 of respondent's brief that the Court of Appeals said it reached the jurisdictional issue is approximately correct.

peated here. The Second Circuit would not give a written opinion, although petitioner's counsel asked if it would not do so. On petitions for rehearing and rehearing en banc the Second Circuit avoided the clear right of petitioner to a hearing under *Golden* v. *Zwickler* by the simple expedient of never referring to it in its *pro forma* denials of the petitions. In all common justice such a procedure should not be approved by denial of the petitioner here.

To encompass respondent's imaginative theory, it is suggested that the case be remanded to the Second Circuit with instructions that it consider whether a hearing in accordance with *Golden* v. *Zwickler* and meeting the requirements of due process of law has been afforded petitioner and, if not, that it order that such a hearing be held. If, in the remote possibility that the Second Circuit, like respondent, considered oral argument before it a *Golden* v. *Zwickler* hearing satisfying due process, the Second Circuit can say so. There must be judicial adherence. To what effect is the Constitution's guarantee of due process if it can be negated by disregard?

Respectfully submitted,

WALTER D. AMES
JAMES H. MARSH, JR.
Attorneys for Petitioner,
Loctite Corporation
WATSON, COLE, GRINDLE & WATSON
815 Fifteenth Street, N.W.
Washington, D. C. 20005

Of Counsel:

J. RODNEY RECK